

Message Text

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C O N F I D E N T I A L SANTIAGO 0396

EXDIS

EO 11652: GDS

TAGS: CI, EIND

SUBJECT: COPPER NEGOTIATIONS

REF: STATE 012481

1. SUMMARY: RAUL SAEZ REPORTS SUBSTANTIAL PROGRESS ON CERRO AND ANACONDA CASES AND OPTIMISM THAT AGREEMENT ON MAJOR CONTOURS SETTLEMENT BOTH CASES CAN BE ACHIEVED IN FEBRUARY. HE REPORTS NO PROGRESS ON KENNECOTT BECAUSE OF ABSENCE OF LOCAL REPRESENTATIVE TO CONDUCT DISCUSSIONS WITH NEGOTIATOR PHILIPPI. HOWEVER, SAEZ HAS FOUND KENNECOTT VERY COOPERATIVE IN DELAYING LEGAL ACTIONS ABROAD. PHILIPPI GOES TO WASHINGTON JANUARY 29 FOR DISCUSSIONS WITH ALL THREE COMPANIES. ACTION: DEPARTMENT MAY WISH TO SEEK CERRO AND ANACONDA APPRAISAL OF PROGRESS TO DETERMINE WHETHER IT WOULD BE USEFUL FOR ME TO SEE PHILIPPI BEFORE HE DEPARTS. END SUMMARY

2. RAUL SAEZ RECEIVED ME AT MY REQUEST AT 9:00 AM TODAY, JANUARY 24. IN COURSE OF OUR TALK I RAISED THIS SUBJECT. SAEZ REPORTED THAT PHILIPPI'S TALKS WITH CERRO AND ANACONDA LOCAL LEGAL REPRESENTATIVES HAVE MADE SUBSTANTIAL PROGRESS. HE IS OPTIMISTIC THAT THE MAIN OUTLINES OF SETTLEMENTS WITH BOTH COMPANIES CAN BE AGREED UPON IN FEBRUARY.

3. WITH REGARD TO CERRO, SAEZ CONSIDERS THAT OUTSTANDING ISSUE IS MORE A QUESTION OF TIMING OF GOC PAYMENT THAN AMOUNT OF COMPENSATION, WHICH HE ROUGHLY ESTIMATES AT SLIGHTLY LESS CONFIDENTIAL

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THAN \$40 MILLION. APPARENTLY CERRO IS HOPEFUL OF A LARGE INITIAL PAYMENT, PERHAPS ON THE ORDER OF \$20 MILLION. SAEZ HIMSELF MET WITH THE LOCAL CERRO LEGAL REPRESENTATIVE IN PHILIPPI'S PRESENCE TO MAKE THE POINT THAT WHILE PHILIPPI IS THE COPPER NEGOTIATOR,

SAEZ IS RESPONSIBLE FOR HANDLING CHILEAN EXTERNAL DEBT AND THAT GOC POSITION AT FEBRUARY MEETING OF PARIS CLUB WOULD BE UNTENABLE IF GOC TRIED TO TELL OTHER CREDITORS THAT THEY HAD TO WAIT LONGER FOR PAYMENT BECAUSE GOC GIVING PRIORITY TO PAYMENTS TO COPPER COMPANIES. DESPITE THIS PROBLEM, SAEZ POINTS OUT THAT GOC CAN IMPROVE SETTLEMENT PACKAGE BY OFFERING CERRO PARTICIPATION IN PLANNED 40 PC EXPANSION OF ANDINA CAPACITY AND/OR SOME SUPPLIES OF CHILEAN COPPER. TAKING THESE FACTORS INTO ACCOUNT, HE IS CONFIDENT THAT EARLY SETTLEMENT CAN BE REACHED.

4. ON KENNECOTT, THERE HAS BEEN NO PROGRESS BECAUSE PHILIPPI HAS HAD NO KENNECOTT REPRESENTATIVE WITH WHOM TO TALK. PHILIPPI HAS HAD TO INFORM HIMSELF ON THE KENNECOTT SITUATION BY USING A FORMER EL TENIENTE LAWYER NOW WITH CODELCO. THE GOC HAS FOUND THAT IN MANY WAYS THE KENNECOTT CASE IS THE CLEANEST AND THE SIMPLEST BUT PRESENTS THE MOST FORMIDABLE CONSTITUTIONAL PROBLEM OF ALL. SAEZ EXPLAINS THAT THE JUNTA IN GENERAL HAS PROCEEDED ON THE BASIS THAT IT OUSTED THE ALLENDE GOVERNMENT FOR FLAGRANT VIOLATION OF THE CHILEAN CONSTITUTION AND HAS PROCEEDED TO ACT WITHIN THE FRAMEWORK OF THE EXISTING CONSTITUTION. AS A RESULT, THE JUNTA WOULD VASTLY PREFER NOT REPEAT NOT TO HAVE TO PASS A DECREE LAW WITH CONSTITUTIONAL EFFECTS IN ORDER TO SOLVE THE COPPER PROBLEM BUT RECOGNIZES THIS IS EXTREMELY DIFFICULT TO AVOID GIVEN THE NATURE OF THE KENNECOTT CASE.

5. SAEZ SAID THE GERMAN COURT HANDLING THE KENNECOTT SUIT HAD SCHEDULED A HEARING IN EARLY FEBRUARY. SAEZ TELEGRAPHED MILLIKEN ASKING HIM TO AGREE TO A DELAY. MILLIKEN REPLIED THAT KENNECOTT WOULD NOT OPPOSE A REQUEST FOR DELAY MADE TO THE COURT BY THE GOC'S LAWYERS. THERE WAS SOME CONFUSION BETWEEN THE GERMAN LAWYERS REPRESENTING BOTH PARTIES AND SAEZ HAD ANOTHER CABLE EXCHANGE WITH MILLIKEN IN WHICH THE LATTER REAFFIRMED HIS COOPERATIVE POSITION. SAEZ SAYS IT IS THE GOC INTENTION TO PAY REASONABLE COMPENSATION TO KENNECOTT AND HE HAS TOLD PHILIPPI THAT HE SHOULD BE SURE TO MAKE THAT CLEAR WHEN HE MEETS WITH KENNECOTT ON THE GROUNDS THAT PEOPLE WHO ARE BEHAVING WITH SUCH DECENCY ARE ENTITLED TO THAT ASSURANCE. CONFIDENTIAL

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HE HAS ASKED PHILIPPI TO TELL KENNECOTT THAT WHILE THE GOC IS ANXIOUS TO AVOID THE PROMULGATION OF A DECREE LAW TO SOLVE THE KENNECOTT PROBLEM AND WISHES TO EXPLORE ALL AVENUES TO ACHIEVE A SETTLEMENT WITHOUT IT, A SETTLEMENT WILL BE REACHED EVEN IF IT REQUIRES A DECREE LAW.

6. SAEZ REPORTS THAT PHILIPPI WILL DEPART FOR WASHINGTON JANUARY 29 FOR TALKS WITH ALL THREE COMPANIES. IN ADDITION TO MEETING CERRO REPRESENTATIVES, IT HAS BEEN AGREED THAT PHILIPPI WILL MEET WITH QUIGLEY OF ANACONDA AND MICHAELSON OF KENNECOTT.

7. I TOLD SAEZ THAT I HAD BEEN DISTURBED WITHIN THE LAST WEEK

BY A REPORT THAT THE JUNTA ADVISORY GROUP HEADED BY COLONEL CANESSA HAD PERSUADED THE GOC TO PUT THE COPPER CASES BACK INTO THE COPPER TRIBUNAL FOR SETTLEMENT. SAEZ SAID SUCH A REPORT WAS CERTAINLY A DISTORTION OF THE FACTS BUT COULD BE BASED ON GOC DISCUSSION WITHIN THE LAST COUPLE OF WEEKS OF THE POSSIBILITY OF USING THE COPPER TRIBUNAL AS A CONCILIATION MECHANISM. UNDER SUCH A PROCEDURE THE COPPER TRIBUNAL WOULD INVITE THE GOC AND THE COMPANIES TO NEGOTIATE A SETTLEMENT BETWEEN THEMSELVES -- OUTSIDE THE TRIBUNAL ITSELF BUT WITHIN THE TERMS OF EXISTING LEGISLATION.

8. EARLIER THIS WEEK I ASKED EMBOFF TO TOUCH BASE WITH CERRO AND ANACONDA LOCAL LEGAL REPRESENTATIVES. BOTH REPORTED THEMSELVES PLEASED WITH PHILIPPI'S WORK AND AGREED THAT HIS FORTHCOMING TRIP COULD BE IMPORTANT BUT NEITHER HAD ANY HARD INFORMATION ON WHAT HE INTENDS TO DO. THE CERRO REPRESENTATIVE REPORTED THAT IT HAS BEEN AGREED THAT THERE IS A WAY AROUND THE OUTSTANDING CERRO TAX PROBLEM. THE ANACONDA REPRESENTATIVE WAS VERY PLEASED WITH PHILIPPI'S GRASP OF THE TOTAL PROBLEM AND HIS READINESS FOR SERIOUS TALKS. HE REPORTED PHILIPPI HAD OUTLINED SEVERAL AREAS FOR INITIAL DISCUSSION, ALL KEYED TO THE CHILEAN CONSTITUTIONAL REFORM, WHEREAS ANACONDA'S ORDER OF PRIORITIES FOR TALKS IS CONSIDERABLY DIFFERENT. HE ANTICIPATES THAT ANACONDA'S POSITION IN THE FIRST MEETING WILL BE A TOUGH ONE BUT SAYS THAT PHILIPPI IS PREPARED FOR THIS.

9. COMMENT: I BELIEVE THE GOC COMMITMENT TO WORK OUT A REASONABLE SETTLEMENT REMAINS FIRM. I AM PERSUADED THE GOC IS CONFIDENTIAL

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VERY WORRIED ABOUT THE DOMESTIC POLITICAL AND IMAGE PROBLEMS INVOLVED IN AGREEING TO A SETTLEMENT. A SOURCE OF PARTICULAR CONCERN IS THE UNANIMOUS CONGRESSIONAL VOTE (INCLUDING THE NON-MARXIST PARTIES IN OPPOSITION TO ALLENDE) IN FAVOR OF THE CONSTITUTIONAL REFORM ON COPPER WHICH INCLUDED THE CONCEPT OF EXCESS PROFITS. (I CONSIDER THE RECURRENT CONSIDERATION OF A ROLE FOR THE COPPER TRIBUNAL AS EVIDENCE OF GOC GROPING FOR A FORMULA WHICH WILL PROVIDE A LEGAL SANCTION WHICH WILL REDUCE THE POLITICAL COST OF A NEGOTIATED SETTLEMENT.) OF LESSER IMPORTANCE BUT STILL SIGNIFICANT IS THE DIFFICULTY THE GOC WILL HAVE IN WORKING OUT TERMS OF PAYMENT ACCEPTABLE TO THE COMPANIES AND YET FEASIBLE FOR THE GOC IN TERMS OF ITS FINANCIAL PROBLEMS, ITS IMF UNDERTAKINGS, AND ITS POSITION WITH INTERNATIONAL CREDITORS.

10. DEPARTMENT MAY WISH TO SEEK CERRO AND ANACONDA APPRAISAL OF PROGRESS OF TALKS WITH GOC. (SAEZ SAID HE HAD NO OBJECTION AND IN FACT WOULD CONSIDER IT USEFUL.) I HAVE NOT SEEN PHILIPPI SINCE I PAID A COURTESY CALL ON HIM ON JANUARY 3. I COULD CALL ON HIM AGAIN BEFORE HIS DEPARTURE IF DEPARTMENT CONCLUDES THERE IS ANYTHING USEFUL I COULD SAY.
THOMPSON

CONFIDENTIAL

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